



The Task Force on Court Facilities
455 Golden Gate Avenue, San Francisco, CA 94102-3660

FINANCE AND IMPLEMENTATION COMMITTEE
Conference Call Report
August 15, 2000

TASK FORCE ATTENDEES: None	PRESENTERS: Dr. Thomas Gardner, VITETTA
COMMITTEE MEMBERS: PRESENT: Mr. David Janssen, Chair Mr. Greg Abel Mr. Fred Klass Hon. Charles Smith Hon. Diane Wick	TASK FORCE STAFF: Mr. Bob Lloyd Mr. Bob Emerson
ABSENT: None	CONSULTANTS TO THE TASK FORCE: Dr. Thomas Gardner, VITETTA Mr. Jay Smith, DMJM Ms. Kit Cole, VITETTA
	GUESTS: Mr. Rubin Lopez, CSAC Ms. Cathy Knighten, County of Orange <i>(Others may have been present but not identified on the telephone)</i>

Committee agenda

1. Review white paper for Task Force review and approval at the August 30/31 meeting in Santa Barbara
2. Discuss and resolve outstanding issues

Agenda Item #1 – White paper – consensus issues

The Committee discussed the white paper of consensus issues to date regarding the transfer of responsibility for court facilities from the counties to the state as prepared by the consultants and made changes, as indicated.

Strikeouts and italics reflect changes made by the Committee at the August 15 conference call.

Responsibility

1. The state shall *ultimately* be fully responsible for all court facilities, including providing facilities for current and future judges and staff.
2. *Pursuant to law as stated in AB 233, responsibility for providing court facilities for new judges and staff associated with those judges, rests with the state, effective July 1, 2001.*
3. Responsibility for providing court facilities shall remain with the counties until completion of the negotiations between the *Judicial Council* ~~state, the courts~~ and the counties.
4. ~~Ownership may include holding fee title or may be accomplished through lease contracts.~~
5. ~~“State” can include the Judicial Council, the Department of General Services or another entity that holds the title.~~

5. ~~Responsibilities of parties~~ *The sharing of mixed use buildings shall be established by in the lease agreement.*

Fiscal neutrality

1. Responsibility for funding existing debt on facilities shall remain with counties until the debt is retired, either directly or by transferring the revenue stream and debt to the state.
2. The control of court facilities should transfer to the state without *any fiscal gain or loss "windfall"* to either the counties or the state.
3. ~~Either the existing debt service revenues will transfer to the state with the debt, or if not transferred, the facilities will be leased at minimal cost to the state until the county retires the debt.~~
4. If title transfers, it shall do so without payment for capitalized value of buildings *and the land associated with those buildings.*
5. Existing non-Rule 810 facility operations and maintenance costs shall continue to be funded by the counties through a maintenance of effort (MOE) agreement.
6. ~~The facility operations and maintenance costs MOE will not apply to those buildings, or portions thereof, for which the counties retain ownership.~~
7. 6. The MOE will be determined based on *a calculation of the average of the most recent three fiscal years of on historical data regarding* non-Rule 810 allowable costs related to facilities, as tracked by the counties. *Additionally, the amount of the three-year average shall be multiplied by an appropriate consumer or producer price index for each of the three years and for any additional years that may ensue prior to the final agreement. This final amount shall be capped in perpetuity.* Prior to _____ (date) each county shall submit to the Department of Finance data regarding non-810 facility costs from the most recent three fiscal years. All data shall be certified by the county auditor prior to being submitted to the Department of Finance.
8. 7. Determination of appraised value shall not be necessary as a condition of transfer.
9. 8. Revenue generated by the Courthouse Construction fees will transfer from the counties to the state, less any funds obligated to debt service, should the outcome of the negotiations between the state, the courts and the counties determine that the debt should remain with the counties. Should the debt transfer to the state, the corollary debt service stream shall also transfer to the state. *(see #13 under Implementation Issues for more detail regarding this issue).*
10. ~~Once debt service for court facilities is retired, all Courthouse Construction funds, less 25% shall be submitted to the Judicial Council by the courts counties.~~

Principles for transfer

1. It is critical to expedite the transfer of responsibility for court facilities to the state.
2. The transfer of responsibility shall be accomplished through negotiations between the *Judicial Council state, courts* and the counties.
3. The state shall not hold the counties liable for deferred maintenance that existed in the base year and for which no funds were earmarked to address that maintenance.
4. ~~Facilities determined as unsuitable for court use may or may not be transferred based on outcomes of negotiations between the state, courts and the counties.~~
5. 4. Issues regarding occupancy and use of space within a mixed-use building shall be agreed upon by the *Judicial Council state, courts* and the counties and shall be spelled out in an MOU.
6. ~~Single use court facilities that are not historic are assumed to transfer to the state.~~
7. ~~All other facilities shall transfer to the state unless the state rejects the building for health, safety or seismic reasons. When the rejection of a building by the state occurs and is appealed by the county to the state Public Works Board, the "burden of proof" to demonstrate the grounds on which the facility was rejected lies with the state.~~
8. ~~Should a building not transfer to the state from the county because the building is deemed unsuitable by the state, the county shall continue to be responsible for providing court space in that facility for the state, as negotiated.~~
5. *A building may be determined unsuitable for court use due only to significant health, safety, seismic or functional deficiencies. The state may reject the transfer of unsuitable buildings, in which case the county will continue to be responsible for providing the court with suitable and necessary space. All*

other single use court facilities shall transfer to the state. Counties may appeal rejection of an unsuitable building by the state to the Public Works Board. The "burden of proof" to demonstrate the justification for which the facility was rejected lies with the state.

- 9- 6. Notwithstanding mutual agreement, new mandates should not be placed on the counties as a condition of the transfer.
- 10- 7. Certain special classes of facilities, such as historically significant facilities, may or may not transfer, but ~~may be leased by~~ *must be made available* to the state for court use.
- 11- 8. Facilities considered "historic" shall either be registered on the state's historic register (pursuant to Health and Safety Code 18950) or be eligible for inclusion on the register.

Implementation issues

- 1- Responsibility for providing court facilities shall transfer from the counties to the state, *within three years after legislation implementing the Task Force's recommendations becomes effective. without a deadline to do so.*
2. The ~~state~~ *Judicial Council* and counties will negotiate on a county-by-county and building-by-building basis in order to determine the most optimal way to provide court facilities in that county.
3. The ~~Judicial Council AOC, the local court~~ and the county will participate in the negotiations regarding the buildings.
4. The state Public Works Board will be the final arbiter in any disputes between the ~~Judicial Council state, courts~~ and counties during the building-by-building negotiations.
5. All counties shall participate in the transfer of responsibility for court facilities from the counties to the state. ~~Under no circumstances will counties have the choice to "opt out" of the transfer process.~~
6. Both the county and the state will be entitled to equity in court facilities, based on the respective proportional use of area by the courts and by non-court *county* functions, *at the time that the MOE is determined, that are the responsibility of the county,* regardless of which entity holds title to the facility.
7. Any county general funds or property that have been allocated, approved, appropriated, or committed for a court facility project by a county board of supervisors, by resolution or ordinance, shall remain committed to the project.
8. ~~Any county court facility project that is in the design or construction phase shall be the subject of negotiations by the state, courts and county during the transition phase.~~ The state reserves the right to require a county to complete a project in the design or construction phase prior to its transfer to the state.
9. *The state can negotiate design changes related to a court facility project with the county to the degree that the design changes do not increase the cost of the project to the county.*
10. The state reserves the right to dispose of surplus property when title for the property transfers to the state.
11. Prior to disposing of court facilities that were previously the responsibility of the counties, the state shall comply with the requirements of Government Code section 11010.5 et seq.
12. Prior to the state making a decision to sell, lease or otherwise dispose of a court facility transferred from a county to the state, it shall consult and discuss the potential sale, lease or disposition with the affected county. The state shall also consider the following whether the potential new or planned use of the facility:
 - Is compatible the use of other adjacent public buildings.
 - Would interfere with public access to other governmental functions adjacent to the court facility.
 - Would unreasonably depart from the historic or local character of the surround property or local community.
 - Would have a negative impact on the local community.
 - Will unreasonably interfere with other governmental agencies that use or are located in or adjacent to the court facility.

Additionally, the state shall consider whether the decision to cease using the facility or site outweighs a public good in maintaining it as a court facility or site.

13. The counties shall transfer 75% of the unencumbered revenue generated by the Courthouse Construction fee to the Judicial Council for allocation by the Judicial Council. The remaining 25% will be retained by the ~~counties~~ court and allocated pursuant to current law.

Principles for negotiation involving mixed-use buildings

The Committee has agreed that the state, the courts and the counties will negotiate building transfer on a building-by-building basis, with the state having the option to take title of a building or lease space for the courts from the county.

In light of the negotiation process that will have to occur over the course of the transition, the Committee has established the following principles for negotiations between the state, the courts and the counties regarding mixed-use buildings, which comprise approximately 60% of the total number of court facilities.

Strikeouts and italics represent changes made by the Committee on the August 15 conference call.

1. *“Responsibility” for court facilities can be accomplish by the state either holding fee title or entering into a lease agreement with a county or a private landlord.*
2. The county and state each have equity rights to the space they occupy, regardless of ~~who~~ *which party* holds title.
3. Neither the state nor the county shall charge each other rent for space *in use at the time the MOE is determined*. Additional space will be paid by the agency desiring more space.
4. In the case of mixed-use buildings, the *state and the* county shall continue to be responsible for the operations and maintenance costs associated with the share of the building it occupies, *except that the county is liable for the base year operations and maintenance costs pursuant to the terms of the MOE*.
5. The sale of property is permissible, regardless of which party holds title; however, neither party can be displaced or forced to move at its expense, except by mutual agreement. *The departing party shall retain its equity interest in the vacated space.*
6. The option to leave occupied space to move to new space is a cost borne by the agency desiring the new space.
7. The use of any space occupied by the county or the state must be compatible with the facility and ~~neither~~ *not substantially* deteriorate ~~nor~~ or diminish the ability of either the county or the state to use the remaining spaces effectively.

Agenda item #2 – Outstanding issues

1. Jay Smith’s report regarding survey findings related to “deficient” buildings.

Discussion of this issue was postponed until the consultants can access the database and provide the appropriate data for the Committee.

2. Appellate and Supreme Court facilities issues – should the Committee recommend that these two court systems be administered in a manner similar to that being proposed for the trial courts?

Discussion regarding this issue resulted in the Committee reaching consensus that the Appellate/Supreme and trial courts facilities matters should remain in separate systems, each with their own requirements and processes. The organization of facility responsibilities should be left up to the Judicial Council and the AOC.

3. Establishing the “accept” or “reject” standards for buildings – setting the bar “high”?

The Committee determined that buildings should only be rejected for health, safety, seismic or functional reasons and language to that end was inserted under Principles for Transfer #5. If a building is rejected by the state the justification for that rejection is the burden of the state. Counties can appeal this decision before the State Public Works Board.